

W. G. Thurston, K.C., for the plaintiff.  
E. B. Ryckman, K.C., for the defendants.

KELLY, J. (after stating the facts at length):—The plaintiff's chief causes of complaint are: (1) that the defendants' operations in the river were so conducted as to prevent his using it as he had a right to use it; and (2) that the defendants committed a trespass upon his property by erecting the jack-ladder wholly or in part thereon, and caused him damage by destroying and removing trees and by flooding a portion of his land.

Dealing with the first of these objections, the defendants have placed much reliance upon their contention that the plaintiff, by reason of the one-chain reserve along the shore of the river, is not a riparian proprietor, and so is not entitled to the privileges of such an owner. This contention is based upon the assumption that the reserve is to be measured from high water mark, and that, therefore, at times of low water, land would intervene between the shore side of the reserve and the edge of the water. Even were it conceded that the measurement of the chain reserve is to be made from high water mark (a position which, on the authorities, is untenable), it cannot be admitted, as contended by the defendants, that the line of these waters in the summer of 1912, when the defendants, for their own purposes, raised the water level several feet above normal, can be considered as the high water line: *County of York v. Rolls*, 27 A.R. 72; *Angell on Watercourses*, 7th ed., sec. 53, p. 50, note 1.

The further contention that the chain reserve itself cuts off the plaintiff's right of access to the water cannot prevail. A case much similar in this respect to the present is *Metropolitan Board of Works v. McCarthy*, 7 H.L.C. 243, reference to which will throw some light upon the effect of the conditions existing here.

Another element to be considered in solving the question of the defendants' liability is, whether they were within their rights in using the river as they did use it. They maintain that they have not exceeded the statutory rights of those engaged in a business such as they carry on. The *Saw Logs Driving Act*, R.S.O. 1897 ch. 43, relates to the duties of persons floating logs and their obligations to break jams and to clear the logs from the banks and shores of the water with reasonable despatch, and to run and drive them so as not unnecessarily to obstruct the flow or navigation of the waters.

It is unquestionable that the defendants did so obstruct the river as to render it extremely dangerous, and at times impos-